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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 103

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

v.

TRUCK DRIVERS LOCAL UNION NO. 449, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A.F.L.

BRIEF FOR AMERICAN TRUCKING ASSOCIATIONS, INC. AS AMICUS CURIAE

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November 30, 1956

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were disconsonant with the express purposes of the Act and sought, albeit on a temporary basis, to undermine the bargaining representative selected by the group, an end at variance with Congressional policies, its members thereby lost the protection which Section 7 secures.

In balancing the difficult factors of insuring to employees their traditional right to cease their work to impose legitimate demands on their employers by legal means against avoiding the burdening of commerce by work stoppages utilizing tactics Congress has condemned, we submit that the Board has properly determined the preponderant public interest by its decision here. The very fact that it originally reached an opposite conclusion but, when the improper consequences of that position were repeatedly noted by the Circuit Courts, re-evaluated the question and came to the conclusion it reached here, in the light of its greater study and experience, is significant.

To deny the Board the right to permit employers faced with this disruptive tactic to defend themselves by terminating their operations until it is abandoned, as the Court below has done, is to undo much of the progress towards industrial stability which has been secured by the labor contracts and negotiations attained through multi-employer bargaining, the propriety of which is treated in briefs of other *amici curiae*. This would conflict with the clear desire of Congress and with the interest of the public, as well as with that of the many associations who are members of American Trucking Associations, Inc.

CONCLUSION

We respectfully urge this Court to reverse the decision of the Court below and sustain the order of the National Labor Relations Board dismissing the complaint.

Respectfully submitted,

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BRIEF FOR AMERICAN TRUCKING ASSOCIATIONS, INC. AS AMICUS CURIAE[1]

OPINIONS BELOW

The opinion of the National Labor Relations Board, herein called the Board, dismissing the complaint, based on a charge filed by Truck Drivers Local Union No. 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,

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[1] This amicus curiae brief is filed with written consent of the parties.

A.F.L., herein called the Union, entered on July 26, 1954, is reported at 109 NLRB 447. The opinion of the United States Court of Appeals for the Second Circuit, setting aside the Board's order, is reported at 231 F. 2d 110.

JURISDICTION

The judgment of the court below was entered on March 13, 1956. The jurisdiction of this Court was invoked under Section 10(e) of the National Labor Relations Act, herein called the Act, and under 28 U.S.C. § 1254(1). The petition for certiorari was granted on October 8, 1956.

INTEREST OF AMERICAN TRUCKING ASSOCIATIONS, INC.[2]

The A.T.A. is a federation of affiliated associations of trucking employers throughout every state in the Union and the District of Columbia. Multi-employer bargaining "of every conceivable size, shape and character"[3] prevails in the trucking industry, which is almost completely organized, and its members bargain almost exclusively with various subordinate bodies of the International Brotherhood of Teamsters. There are over 75 trucking employer associations which bargain with unions representing their employees on a multi-employer basis. The large number of carriers concerned with the maintenance of stability, without

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[2] Pursuant to Rule 42(5) of the Rules of this Court, this brief amicus will set forth only the interest of American Trucking Associations, Inc., herein called A.T.A., the summary of argument, the argument, and the conclusion, and rely on the Government's brief for the other customary sections.

[3] Feinsinger, Nathan P., "Collective Bargaining in the Trucking Industry," Univ. of Pa. Press, 1949, p. iii.

work stoppages, during negotiations on such a multi-employer basis is dramatically attested to by the fact that among A.T.A. members are the Empire State Highway Transportation Association, Inc., with a membership of approximately 1500 carriers in the New York metropolitan area and California Trucking Association, Los Angeles, California, with approximately 800 members in California, Nevada, Arizona and El Paso, Texas. Among other motor carrier groups vitally interested are the Motor Carriers Council of St. Louis, St. Louis, Mo., with 100 carriers in the St. Louis area; Motor Transport Labor Relations, Inc., Philadelphia, Pa., with 300 carriers in the Philadelphia area; and Labor Relations Department, OTA, Columbus, Ohio, with 165 carriers in Ohio.

The dependence of the entire nation and its economy on the trucking industry is self-evident, since "labor relations in the trucking industry, like those in the railway and coal industries are a matter of direct concern to virtually every business in the country." (Feinsinger, *op. cit.*, p. iii). See also Gillingham, J. B. "The Teamsters Union on the West Coast." Univ. of Calif., 1956. (Institute of Industrial Relations Monograph No. 9).

The trucking industry, moreover, includes by far the largest carriers of agricultural products. Thus, the effect on interstate commerce of those obstructions which Congress sought to end, both by the original Act and its amendments, displays its most serious impact on the public in this industry, which has been subject to extensive regulation by both the Federal Government and the States.

The tendency is toward including a greater number of employers in an increasingly larger area into uni-

fied, multi-employer bargaining groups, bargaining with the Teamsters in one set of negotiations, at least as to major issues. As long ago as 1948, Dr. George W. Taylor, of the University of Pennsylvania, commented on this condition when he said:

> "Since the union has sought to apply the same kind of wage policy to all those who employ its members, and has had the economic power substantially to effectuate its policy in recent years, the operators have at least one very strong community of interest—their labor relationships. As employers became aware of this fact and became cognizant of their own individual lack of economic power, they began forming their own organizations for collective bargaining. To a large extent these organizations have tended to encompass those operators from whom the union has customarily sought identical terms of employment. One can even conclude that multi-employer bargaining in the trucking industry was inaugurated by employers the better to insure retention of their own collective bargaining rights." (Feinsinger, *op. cit.*, p. iv)

See also Lahne, Herbert J., "The Intermediate Union Body in Collective Bargaining" (Industrial and Labor Relations Review, v. 6, no. 2, Jan. 1953, "The Teamsters," pp. 172-174).

Attempts by the Teamsters to gain their objectives through selective strikes against a limited number of motor carrier employers included in larger employer groups in the trucking industry in 1955 resulted in 2 major stoppages, one a 44-day stoppage in Connecticut, Massachusetts, Rhode Island and other Eastern states, and the second a 24-day stoppage in 12 Western states.[4] The first involved 20,000 and the second 29,000 workers.

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[4] U. S. Dept. of Labor, Bur. of Labor Statistics, "Analysis of Work Stoppages 1955" (Bulletin No. 1196), pp. 4, 16, 17.

The significance to the A.T.A. of invalidating this tactic is self-evident.

STATEMENT

During the customary negotiations with the Linen and Credit Exchange, herein called the Exchange, for a new contract covering the employees of 8 of its members whose truck drivers were represented by the Union, the Union struck Frontier Linen Supply, Inc., herein called Frontier, with which it had no separate dispute. Rather than follow the tempting alternative of taking over Frontier's customers while their own employees, continuing to receive wages, supported their union's action against Frontier, the other members ceased operations, pending the termination of this strike. The Board refused to find that by doing so they had either interfered with or discouraged the legitimate concerted or union activities of their employees protected by the Act.

SUMMARY OF ARGUMENT

A.T.A. will confine its argument in this brief to its contentions that (1) the Board's conclusion was correct that the coercive device utilized here by the Union was not protected by the Act, and the cessation of activities by the employers other than Frontier was not, therefore, violative of either Section 8(a)(1) or 8(a)(3) of the Act; and (2) that assuming, *arguendo*, that the Union's strike activities were inevitably discouraged by the cessation of the operations of the other employers, the protective action of the other members of the Exchange was "for cause" within the meaning of Section 10(c) of the Act, and hence could not be the basis for a remedial order.

ARGUMENT

I. THE CONCERTED ACTIVITY PROTECTED BY THE ACT DOES NOT EMBODY ALL STRIKE ACTIVITY

The fundamental error of the Court below lies in its failure to recognize the limitations which this Court, throughout the years, has, in interpreting congressional intent, placed upon the rights of employees to engage in concerted action and to impose coercive pressures on employers in the course of negotiating labor agreements. Thus, this Court long ago cautioned the Board against interpreting the Act to protect employee concerted conduct for example, which involved the tortious seizure of the employer's property (*N. L. R. B.* v. *Fansteel Metallugical Corp.*, 306 U. S. 240 (1939)); which was at odds with the Union's contractual obligations (*N. L. R. B.* v. *The Sands Manufacturing Co.*, 306 U. S. 332 (1939)); or which was at variance with the mutiny statutes (*Southern Steamship Co.* v. *N. L. R. B.*, 316 U. S. 31 (1942)).

Here, the Union's tactic of threatening each member of the Exchange, without warning as to when or on which the weapon would next be used, with a separate strike designed to force each member to abandon the bargaining position assumed by its collective representative, was clearly beyond the protection the Act extends to employees engaging in legitimate concerted activity. The Court below failed to recognize that the device utilized by the Union was at variance with the activities which Congress sought to protect, both in the method used to secure its objective, and in the end it sought to achieve. There is a striking similarity between the tactic utilized here and the one held beyond the Act's protection by this Court in *Automobile Workers* v. *Wisconsin Board*, 336 U. S. 245, 256-257 (1949). There the Court pointed out that not

all concerted or even union activities of employees fall within the Act's protection, as the Board acknowledged in early decisions, when it held:

> ". . . Section 7 of the Act expressly guarantees employees the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. We do not interpret this to mean that it is unlawful for an employer to discharge an employee for *any* activity sanctioned by a union or otherwise in the nature of collective activity." (*Harnischfeger Corporation*, 9 NLRB 676, 686 (1938)). See also *Armour & Company*, 25 NLRB 989, 996 (1940).

In the *Automobile Workers* case, the Union instigated certain intermittent and unannounced work stoppages after a deadlock in contract negotiations with the employer, Briggs & Stratton Corporation, without any indication as to when the employees would return to work. In the strategy here involved, the surprise element lay in which employer in the unit would be struck next and when. What this Court said of that tactic is equally true of this: "To hold that the alleged fixed Board interpretation has irrevocably labelled all concerted activities 'protected' would be in the teeth of the Board's own language and would deny any effect to the Courts of Appeals' decisions", citing ". . . *C. G. Conn, Ltd.* v. *N.L.R.B.*, 108 F. 2d 390; *N.L.R.B.* v. *Condenser Corp.*, 128 F. 2d 67; *Home Beneficial Life Ins. Co.* v. *N.L.R.B.*, 159 F. 2d 280; and see *N.L.R.B.* v. *Draper Corp.*, 145 F. 2d 199; *N.L.R.B.* v. *Indiana Desk Co.*, 149 F. 2d 987" (p. 257).

Affirmatively stated, the strike activity which the Act sought to protect was the "traditional peaceful strike for higher wages." *Auto Workers* v. *O'Brien*, 339 U.S. 454, 459 (1950). Conversely, concerted ac-

tivity which is either designed to attain an illegal end or not "carried on in such a manner as to come within the protection of § 7" is beyond the protection of the Act. *N.L.R.B.* v. *Local No. 1229,* 346 U.S. 464 (1953).

II. BY THE STRIKE AT FRONTIER THE UNION UTILIZED AN IMPROPER METHOD TO ATTAIN ITS END

It is easily demonstrable that the strike at Frontier, in the course of negotiations with Exchange, the established representative of the group of employers, constituted, as the Court below did not dispute (R. 44), a potent threat to strike, without warning, one after another of the other members, so that each, shorn of the protection of the group and exposed to the normal competitive practices of its erstwhile associates, whose employees continued working, would be forced to capitulate. The coercive effects of such strike threats are clear, even where only economic pressures are involved.[5]

Regardless of the end sought, the Court below overlooked the fact that the means utilized here can scarcely be viewed as the "traditional peaceful strike for higher wages" which the Act seeks to protect. The arbitrary selection of one member of a multi-employer group, as an example of what might befall each, readily shows that the strike at Frontier was not a proper means of attaining a true collective bargaining objective. Such a tactic is plainly in the realm of those this Court has held beyond the protection of the Act.

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[5] Cf. *Bianchi* v. *U. S.*, 219 F. 2d 182 (C.A. 8) (1955), cert. den. 349 U.S. 915; *Callanan* v. *U. S.*, 223 F. 2d 171 (C.A. 8) (1955), cert. den. 350 U.S. 862. This device lends itself readily to coercion for illegal ends. Cf. *Masiello* v. *U. S.*, 235 F. 2d 279 (C.A. 2), cert. den., 77 S. Ct. 100 where, after an association had agreed to the terms of a contract, individual members were threatened with strikes to procure illegal tribute from the struck employer.

The unlimited protection which the majority below believes attaches to the right to strike (R. 44-45, 47-48) is not consistent with this Court's conclusion that Section 13 does not "make the strike an absolute right" so as to legalize all its variations and place them beyond the power of federal authorities to control or deprive management of the right to take reasonable steps to resist or combat the coercive tactics of the union. The Court below failed to consider that management, this Court has held, need not be disabled from every kind of self-help to cope with such tactics except to submit to the demands. *Automobile Workers* case at p. 264; *Allen-Bradley Local* v. *W.E.R.B.*, 315 U.S. 740, 750-751 (1942).

III. THE TACTIC USED BY THE UNION HAD AN ILLEGAL OBJECTIVE

The tactic to which the Union here resorted served primarily as a means of undermining the employers' designated representative in the established, acknowledged and contractual unit. This is not to say that a *bona fide* strike for a changed, or even an inappropriate, unit is necessarily unprotected. It is not contended that the Union had such an object in this case. The strike at Frontier, however, had the inevitable effect of destroying the status of the employers' representative, the Exchange. Unions, like employers, are obliged to bargain in good faith. Act, Sec. 8(b)(3). Attempts at direct dealing by employers with employees who have designated a bargaining representative have been held to be not only interference with employee rights under Section 7, but also to be a failure to meet the employer's obligation to bargain collectively with that selected representative in violation of Section 8(a)(5), by this Court, which has said:

"That it is a violation of the essential principle of collective bargaining and an infringement of the Act for the employer to disregard the bargaining representative by negotiating with individual employees, whether a majority or a minority, with respect to wages, hours and working conditions was recognized by this Court in *J. I. Case Co.* v. *N.L.R.B.*, 321 U.S. 332; cf. *Order of Railroad Telegraphers* v. *Railway Express Agency*, 321 U.S. 342; see also *National Licorice Co.* v. *N.L.R.B.*, 309 U.S. 350, 359-361. The statute guarantees to all employees the right to bargain collectively through their chosen representatives. Bargaining carried on by the employer directly with the employees, whether a minority or majority, who have not revoked their designation of a bargaining agent, would be subversive of the mode of collective bargaining which the statute has ordained, as the Board, the expert body in this field, has found. Such conduct is therefore an interference with the rights guaranteed by § 7 and a violation of § 8(1) of the Act."

(*Medo Photo Supply Corporation* v. *N.L.R.B.*, 321 U.S. 678, 684 (1944). See also *N.L.R.B.* v. *Highland Shoe, Inc.*, 119 F. 2d 218, 221 (C.A. 1) (1941). Nor does the Union's continued dealing with the Exchange, whose effectiveness it sought to undermine, offset the effect of its conduct. See *N.L.R.B.* v. *Acme Air Appliance Company, Inc.*, 117 F. 2d 417, 420-421 (C.A. 2) (1941).

While employers have no rights comparable to those guaranteed employees by Section 7, unions which represent a majority of their employees in an appropriate unit do have a parallel obligation to bargain collectively with the employer, and the standards for good faith bargaining recited in Section 8(d) are the same for both unions and employers. *National Mari-*

time Union of America, 78 NLRB 971, 980-981 (1948), enforced 175 F. 2d 686 (C.A. 2) (1949), cert. den., 338 U.S. 954. That the employer here involved was, for bargaining purposes, the Exchange, is undisputed. By definition the term "employer" includes "any person acting as an agent of an employer" (Sec. 2(2) and "person" includes one or more associations. (Sec. 2(1)) The Union, as bargaining representative of the employees of all eight members of the Exchange, was obliged to bargain with it in good faith. *American Newspaper Publishers Assn.* v. *N.L.R.B.,* 193 F. 2d 782, 805 (C.A. 7) (1951). By inevitably undermining the status of their collective representative, the Union was not meeting its statutory obligations. Conduct compelling this result could not be protected.

Further, the Act expressly proscribes unions from restraining or coercing an employer in the selection of its bargaining representative (Sec. 8(b)(1)(B)). Insofar as the individual employers, threatened with the devisive strike strategy, were concerned, the Union's conduct was inevitably calculated to attain this end. Here, ". . . the Respondents threatened strike action [was] a coercive tactic . . . calculated and designed to force the Employers to capitulate" to the Union's demands to break from their collective representative's stand. (*International Typographical Union,* 86 NLRB 951, 959). This was coercion in their selection of that representative, and unprotected. Cf. *Morand Bros. Beverage Co.* v. *N.L.R.B.,* 190 F. 2d 576, 582 (C.A. 7) (1951). Here, unlike the latter case, there was no impasse in negotiations. See 109 NLRB at pp. 454-455.

The Board was obliged to give effect to a policy consistent with the will of Congress as expressed through-

out the entire statutory scheme. Conduct at variance with the express proscriptions of that scheme cannot be held within the protection of the Act. Since this coercion was the foreseeable result of the piecemeal strike tactic adopted, it was within the statutory ban, whatever the Union's intent may have been. Cf. *Republic Aviation Corporation* v. *N.L.R.B.*, 324 U.S. 793 (1945). However, the end sought by the Union was plainly that, at least temporarily, each employer would abandon the position taken by its designated representative and capitulate. In any case, as noted above, the means used, despite "the fortuity of the coexistence of a labor dispute," deprived the employees whose representative utilized this device of the Act's protection. *Local Union No. 1229*, case at p. 476.[6]

IV. THE OTHER MEMBERS OF THE EXCHANGE CEASED THEIR OPERATIONS FOR CAUSE

The Board has not, as the Court below erroneously suggests (R. 52), held the activity here unprotected because it works an economic hardship on the employers, but because of the impropriety of the tactic used. See *Automobile Workers* and *Local Union No. 1229* cases, *supra*. Where either the tactic utilized or the end sought conflicts with public policy, it is not protected regardless of whether such policy has been expressed by statute or by judicial interpretation. Cf. *Building Service Employees* v. *Gazzam*, 339 U.S. 532 (1950); *Hughes et al.* v. *Superior Court*, 339 U.S. 532 (1950); *International Brotherhood of Teamsters* v. *Hanke*, 339 U.S. 470 (1950). As noted above, this Court long ago enunciated the limitations on the concerted activities protected by the Act, and cautioned the Board to

[6] The responsibility of the employees for the acts of their representative is not in issue.

interpret them, in its discretion, with consideration of the whole statutory scheme. *Southern S.S. Co.*, *Fansteel Metallurgical* and *Sands Mfg. Co.*, cases, *supra.*

The device employed here resembles closely the "partial strike" whereby employees attempt to work and strike simultaneously. The right to strike which is protected involves the withholding of services and the consequent loss of compensation. As Judge Frank pointed out (R. 54), a strike against all would have been costly to the Union. So would it in the *Automobile Workers* case, *supra.* That does not justify a tactic whereby the Union pressures employers, who must continue to pay wages while faced with the threat of "hit and run," selective stoppages aimed at dividing their legitimate representation through their collective agent. Employees may not dictate when or where they will work. *Rockaway News Co.* v. *N.L.R.B.*, 345 U.S. 71, 75 (1953); *Local No. 1229* case, *supra,* and cases cited at p. 475 thereof. *Hoover Co.* v. *N.L.R.B.*, 191 F. 2d 380, 389 (C.A. 6) (1951); *N.L.R.B.* v. *Montgomery Ward & Co., Inc.*, 157 F. 2d 486, 496 (C.A. 8) (1946).

But regardless of the Union's object, it could not insist that the employees in part of the established unit draw their pay while others withdrew their services, leaving each other member of the Exchange in constant fear that it would be struck next. Under such circumstances the termination of the services of all employees until the strike at Frontier ceased was plainly for cause. *Montgomery Ward* case, *supra,* at pp. 496-497; *Hoover* case, at pp. 389-390.

In short, since the Union utilized, by the strike at Frontier, a means of securing its demands which

NLRB 1001 (1951); *General Baking Company*, 90 NLRB 588 (1950).

In dealing with the union on a multi-employer basis it is the duty of the employers to bargain as a unit through the association for all its members. It is likewise the duty of the union to deal with the employers as a unit. Special advantages which certain individual contracts might provide, either to one employer or to a unit of the local union, must be foregone. If difficulties are encountered during multi-employer contract negotiations, the employer group and the union must hold together in order to resolve such difficulties and to preserve the agreed bargaining unit. Any action taken by the union purportedly against a single member of the association arising out of contract negotiations with the association must be regarded as action taken in reality against the entire association.

Only in this fashion can the purpose and advantages of group bargaining be preserved. This is substantiated by the instant case, in which during the period of the strike and layoff the Union and the Exchange continued to bargain together and promptly agreed upon a new contract. This was the ultimate fulfillment of the basic aim of multi-employer bargaining, which is to provide a fair and equal bargaining position to the parties. Congress clearly intended to equalize collective bargaining power between employers and employees. *Short Title and Declaration of Policy*, Labor Management Relations Act, 1947, and *Findings and Policies* of the Act (61 Stat. 136, 29 U. S. C. Supp. III, §§ 141, 151).

When the multi-employer association is thus viewed as a unit, a strike by a union at one employer's plant arising from contract negotiations between the union and such employer's local association is more than a threat of strike against the other members. In reality it is a strike against the association itself, the agreed employer unit. The layoff

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., 151, *et seq.*), are as follows:

Definitions

Sec. 2. When used in this Act—

(1) The term 'person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, ...

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Unfair Labor Practices

Sec. 8 (a) It shall be unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

Sec. 8 (b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce . . . (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances; . . . .

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a); . . .

should not be viewed as an individual and independent action by the separate group members. When the group is considered—and properly so—as a unit, the suspension of operations is the necessary and only practical reaction of the association, and is directly triggered by the strike.

CONCLUSION

We respectfully submit that the judgment of the Court below should be reversed.

Dated: November 30, 1956

Respectfully submitted,

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